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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CYNTHIA A. FREY  
9100 STERLING MONTAGUE DR.  
GREAT FALLS, VA 22066-4004  
703-845-5370

*Plaintiff*

v.

DEPARTMENT OF ENERGY,  
FORRESTAL BUILDING  
1000 INDEPENDENCE AVE., S.W.,  
Washington, DC 20585,

*Defendant*

Case: 1:07-cv-02083  
Assigned To : Bates, John D.  
Assign. Date : 11/15/2007  
Description: FOIA/Privacy Act

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**COMPLAINT FOR RELIEF UNDER  
THE FREEDOM OF INFORMATION ACT**

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### **Introduction**

1. Plaintiff, Cynthia A. Frey, brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Department of Energy to produce copies of all DOE records submitted to, used by, or issued by the Agency related to an IG investigation conducted into misconduct in the Office of Pipeline Certificates at the Federal Energy Regulatory Commission (FERC), as described below.

### **Jurisdiction**

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

### **Parties**

3. Plaintiff is an attorney advisor at the Federal Regulatory Energy Commission (FERC).

4. Defendant, the Department of Energy (DOE), is an agency of the United States. DOE and the Inspector General of the Department of Energy (OIG), its Office of Hearings and Appeals (OHA) and its Office of the Executive Secretariat have possession and control of the records at issue in this action.

### **The Procedural Path of the FOIA request**

5. On February 15, 2002, Plaintiff filed a FOIA request for copies of documents related to an OIG investigation conducted into alleged criminal misconduct in the Office of Pipeline Certificates at the Federal Energy Regulatory Commission. On May 9, 2002, the OIG released

three documents in their entirety, released 32 documents with material withheld pursuant to FOIA Exemptions 6 and 7(C), and released two documents with material withheld under Exemptions 5, 6, and 7(C). The documents released by the OIG to the Plaintiff were heavily redacted and indecipherable.

6. On July 9, 2002, Plaintiff filed an appeal with OHA protesting the failure of the OIG to release the interviews of Maynard Ugol, her former supervisor at FERC, and Deborah Grayson, a secretary at FERC. Plaintiff argued that the OIG released a "heavily redacted, partial response that gave the impression that the investigation had ended months before Maynard Ugol testified to OIG investigator, Yvette Milam."
7. Mr. Ugol testified twice to Yvette Milam, the first time in the summer or early fall of 1996, and for the second time in late November or early December 1996. Mr. Ugol retired in January 1997. The appeal filed by Plaintiff on July 9, 2002, OHA Case No. VFA-0754 was denied on December 2, 2002, based on the privacy interests of Maynard Ugol and Deborah Grayson.
8. On June 30, 2004, Plaintiff, through her counsel, sent a letter to OHA, requesting copies of all DOE records submitted to, used by, or issued by the agency in reaching its decision and order of December 2, 2002. OHA responded to Plaintiff's request on July 15, 2004, as it stated in its October 22, 2004 order by "providing copies of the 'documents contained in its case file' in Case No. VFA-0754" despite the fact that Plaintiff had requested a broader submittal, as described above. The Office of the Executive Secretariat responded to Plaintiff's request on August 4, 2004, providing little or nothing relevant to the request. OIG responded to Plaintiff's June 30, 2004 request on August 30, 2004. In its response, OIG stated that it had no responsive

documents other than those that it had already provided to Plaintiff in May 2002, and therefore would not be providing any more documents.

9. On September 29, 2004, Plaintiff filed another appeal (Case No. TFA-0072) challenging the response of OIG and OHA to her June 30, 2-04 request. Additionally, on September 30, 2004, Plaintiff filed a Request for Reconsideration (Case No. TFA-0073) of the Decision and Order that the DOE's Office of Hearings and Appeals issued on December 19, 2002. Plaintiff provided evidence of the death of Maynard Ugol, extinguishing his right to privacy, the basis of the OHA's denial of her earlier appeal on December 2, 2002.

10. In her September 29, 2004 appeal, Plaintiff argued that OHA's response to her June 30, 2004 request, was incomplete, because it "did not include any of the OIG's investigative records . . . despite the fact that OHA obtained and reviewed 'unredacted copies' of such materials. OHA October 22, 2004 Order." Plaintiff appealed OIG's refusal to produce documents responsive to her request. Plaintiff also argued that the response of the Office of the Executive Secretariat was incomplete, because it did not include any of OIG's investigative records.

11. On October 22, 2004, Dockets TFA-0072 and TFA- 0073 were combined, and Plaintiff's appeal was denied in part and granted in part. The OHA stated, "We are remanding to OIG the matter of whether any documents pertaining to Mr. Ugol created or obtained in the course of the OIG investigation described above may now be released to [Plaintiff], in light of the evidence [she] has submitted regarding his death." The remand was limited to Mr. Ugol's testimony concerning drug use and leave abuse.

**Response to OHA Remand by the Office of Inspector General of DOE**

12. The OIG responded by producing more records of the investigation, but completely denied that the second interview and testimony by Maynard Ugol in late November or early December 1996, had ever taken place. In fact, Ms. Milam had called Plaintiff at home early in the drab winter morning before Mr. Ugol arrived for the second interview, and confirmed it later, by stating, "He sure talked."

**Request**

13. Plaintiff incorporates the allegations of paragraph 1 through 12 above. Plaintiff requests all of the testimony of Maynard Ugol, particularly that of his second interview with Ms. Yvette Milam in late November or early December of 1996, as well as all investigative materials, notes and tapes, and copies of all DOE records submitted to, used by, or issued by the agency pertaining thereto. Plaintiff also particularly requests that the Court not allow DOE to define the range of testimony or materials contained in a self-defined case file, such as OHA did in its July 15, 2004 submission to Plaintiff's counsel where it searched "'documents contained in its case file' in Case No. VFA-0754" as noted in Paragraph 8 above. Plaintiff is aware that some of Mr. Ugol's testimony is about her, and it is related to the US District Court for the District of Columbia Civil Docket Case No: 1:05-cv-00769-RBW.

**Claim for Relief**

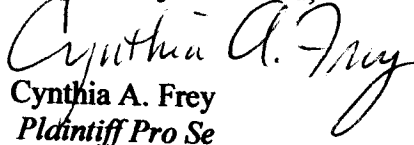
- i. Plaintiff incorporates the allegations of paragraphs 1 through 13 above.
- ii. The materials at issue in this action are agency records of the DOE within the meaning of 5 U.S.C. § 552. The Plaintiff has requested release of these records under FOIA. DOE has either denied or withheld release, and the Plaintiff has exhausted her administrative remedies by filing timely appeals, as described above.
- iii. The Department of Energy's own Office of Hearings and Appeals has held that the requested testimony of Maynard Ugol is not exempt from release under the Freedom of Information Act.

**Relief Requested**

Wherefore, the Plaintiff prays for the following relief:

- i. An injunction requiring the Department of Energy to make all of the testimony of Maynard Ugol from both of his appearance testimonies before the Office of Inspector General, and all investigative materials and documents submitted, used or produced, including the notes and recordings of Yvette Milam, available to the Plaintiff forthwith;
- ii. An award of costs and reasonable attorney fees as authorized by FOIA, 5 U.S.C. § 552(a)(4)(E) and/or the Equal Access to Justice Act, 28 U.S.C. § 2412;
- iii. Such other and further relief as the Court may deem proper.

Respectfully submitted,

  
Cynthia A. Frey  
Plaintiff Pro Se

November 15, 2007